

Transerv Systems, Inc. and Portland Bicycle Messengers Union, Petitioner. Case 36-RC-5488

May 28, 1993

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election. The request for review is granted as it raises substantial issues warranting review. Having carefully considered the entire record in this matter, we find, contrary to the Regional Director, that the petitioned-for bicycle messengers do not share a sufficiently distinct community of interest from other employees as to warrant a separate unit and, therefore, that the petitioned-for unit is not an appropriate unit for purposes of collective bargaining.

The Employer provides document and small package delivery services in the Portland, Oregon metropolitan area. The Employer's operations evidence a high degree of functional integration. Bicycle messengers and drivers work in a single department under Section Manager Roskie, although they have separate immediate supervision. They are dispatched from the same room, report to work at the same facility at approximately the same time, and share a common breakroom. Neither bicycle messengers nor driver messengers receive health insurance, paid vacations, or paid holidays, but both are eligible to participate in the Employers 401(K) plan after a prescribed period, and both are eligible for year-end bonuses. With respect to wages, the Employer utilizes similar formulas based on speed of services and distance traveled. The exact formula differs because drivers cover greater distances and are reimbursed for driving their own vehicles on a per-mile basis. Drivers' wages average between \$7-\$9 per hour plus mileage, while bicycle messengers' wages average between \$6-\$7 per hour. Both must provide their own liability insurance; the Employer provides cargo liability insurance for both drivers and bicycle messengers. Both bicycle messengers and drivers must wear similar uniforms and conform to safety requirements, including wearing helmets and safety belts, respectively. Bicycle messengers check their radios in at the end of each day; drivers' radios are installed in their vehicles.

Bicycle messengers and driver messengers essentially perform the same functions, and there is a high degree of functional integration in the performance of their jobs. Bicycle messengers and driver/messengers pick up and deliver documents and small packages. A bicycle messenger may perform a complete pick up

and delivery or, more commonly, may transfer the material to a driver for delivery or may deliver the material to the Employer's offices for sorting and transfer to a different messenger or driver. Approximately 60-70 percent of the Employer's deliveries require a combination of a bicycle messenger and a driver. When parking is difficult to find, bicycle messengers often enter buildings to pick up or deliver shipments for drivers. Also, two bicycle messengers and six drivers act as process servers in addition to carrying out their regular delivery functions. These employees receive additional training and are under common supervision separate from that of other employees. All employees are eligible to become process servers. Finally, there is evidence of permanent transfers between bicycle messengers and drivers, although, as found by the Regional Director, such transfers are infrequent (6 in 6 years).

A petitioner need seek only *an* appropriate unit for collective bargaining purposes. Here, there are some factors which support finding the petitioned-for unit appropriate, such as the different skills utilized by drivers and bicyclists, the bicyclists' increased exposure to the hazards of traffic and weather, the separate immediate supervision, and the relatively few number of transfers between classifications. We find it more significant, however, that all employees at issue perform the same functions; that most deliveries involve both a messenger and a driver, which evidences a high degree of functional integration among, and frequent contact between, drivers and bicyclists; that all employees in both classifications share similar terms and conditions of employment, and common overall supervision; that some transfers have and do occur between the two groups of employees; and that some drivers and messengers also act as process servers, and share common immediate supervision.

Contrary to the Regional Director, we do not regard the instant case as analogous to cases involving the trucking industry, in which separate units of local and over-the-road drivers may, if sought separately, be found appropriate. Those cases, unlike the instant one, involve, on the one hand, over-the-road drivers who often spend days at a time away from the employer's facility, are paid on a per trip and/or mileage basis, receive advances for necessary out-of-town expenditures, and are subject to a variety of Federal and state regulations; and, on the other hand, local drivers who are not away from the employer's facility overnight but rather return to it once or more each day, are paid on an hourly basis, and, in general, are not subject to the range of regulation applied to over-the-road drivers. See, e.g., *DeCoster Egg Farms*, 223 NLRB 884, 886-887 (1976); *Georgia Highway Express*, 150 NLRB 1649, 1650-1651 (1965). See also *Carpenter Trucking*, 266 NLRB 907 (1985). The instant case does not in-

volve the listed considerations; perhaps most importantly, neither bicycle messengers nor driver messengers perform over-the-road-type duties, such that they—to the exclusion of the other classification—frequently are away from the employer’s facility overnight or longer. Rather, we find this case more like those involving local drivers who may operate different types of trucks but, nonetheless, would be in-

cluded in a single unit. Compare *Carpenter Trucking*, supra; *Phoenician*, 308 NLRB 826 (1992).

Thus, based on all the above, we conclude that the petitioned-for unit of bicycle messengers does not have a sufficiently distinct community of interest to warrant separate representation. Accordingly, the Regional Director’s Decision and Direction of Election is reversed, and the case remanded to the Regional Director for further appropriate action.